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1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF DELAWARE
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In re:) Chapter 11
5) Case No.
6 W.R. GRACE & CO., et al,) 01-1139(JFK)
7)
8 Debtors.) Jointly
9 -----) Administered
10
11 DEPOSITION OF EDWIN N. ORDWAY, JR.
12 New York, New York
13 Friday, August 29, 2008
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23 Reported by:
24 MAYLEEN CINTRON, RMR, CRR
25 JOB NO. 18494

<p style="text-align: right;">Page 22</p> <p>1 E. Ordway 2 compounding should take place quarterly? 3 A. There's a provision that addresses 4 default rate interest calculations. 5 Q. But does that make any reference to 6 "quarterly"? 7 A. It makes reference to the -- that 8 the calculation -- and I don't have the 9 document in front of me to be precise about 10 the language. That there would be 11 calculations of interest on payments that are 12 past due every time that there was an unpaid 13 balance, which would be quarterly. 14 If the interest wasn't paid, then 15 there was another calculation of the default 16 charge. 17 Q. Any other provisions that you can 18 recall? 19 A. No. 20 Q. So basically, the difference 21 between the default rate calculation and what 22 would be the base contract rate calculation 23 has two components; one is that the rate of 24 interest is different, and the other is that 25 there's interest on interest, correct?</p>	<p style="text-align: right;">Page 23</p> <p>1 E. Ordway 2 A. Correct. 3 Q. Okay. Turning to the next page of 4 your declaration. It's actually, again, a 5 part of Paragraph 8. You go through the 6 calculation and find that, as you look at it, 7 the interest at issue is \$90 million and you 8 say that the incremental amount being sought 9 by the lenders is 'di minimus'. Do you see 10 that? 11 A. Yes. 12 Q. Is that your word? 13 A. Yes. 14 Q. Did you choose that word? 15 A. Yes. 16 Q. Is that a term that is given 17 meaning in the accounting literature? 18 A. I'm not sure. 19 Q. Is that term a term that is given 20 meaning in the standards for valuation? 21 A. I'm not sure of that either. 22 Q. We know that it's a legal term, 23 correct? 24 A. Yes, we do. 25 Q. Is that, in fact, the source of</p>
<p style="text-align: right;">Page 24</p> <p>1 E. Ordway 2 your decision to use the word; that is, a 3 legal context? 4 A. It's a legal term that is commonly 5 used in my business. 6 Q. But if we were to go to 7 professional standards and methodologies, 8 accounting standards and methodologies, 9 financial analyses standards and 10 methodologies, we would nowhere find an 11 objective standard stated on the basis of 12 which you can make a conclusion that something 13 is 'di minimus', correct? 14 A. Correct. 15 Q. Was it your idea or somebody else's 16 idea to offer an opinion as to whether the 17 interest rate at issue was 'di minimus'? 18 A. I was asked to provide my opinion. 19 Q. I know that. But was it your idea 20 or somebody else's idea to actually go ahead 21 and do that kind of analysis or determination; 22 that is, whether the interest at issue was 23 'di minimus'? 24 MR. PASQUALE: Objection to form. 25 A. I was asked to prepare this</p>	<p style="text-align: right;">Page 25</p> <p>1 E. Ordway 2 affidavit. 3 Q. When you went down the road to say 4 is it 'di minimus' or not, was that something 5 that you thought of to do or something that 6 counsel thought to do? 7 A. It was our finding. 8 Q. I know it was your finding. But 9 I'm asking -- 10 MR. PASQUALE: He's answering you. 11 Q. It wouldn't be your finding if it 12 wasn't in here. 13 A. I wouldn't have said it if it 14 wasn't a finding. 15 Q. I understand that. But whose idea 16 was it to even go down the path of doing that 17 analysis? 18 MR. PASQUALE: Objection. Let's be 19 specific. What analysis? 20 MR. BERNICK: Determine whether the 21 amount of interest at issue was 22 'di minimus'. 23 A. We were requested to prepare this 24 by counsel and to provide whether we believe 25 that this was 'di minimus' or not.</p>

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1 E. Ordway

2 Q. Okay. So to be fair, then, it was
 3 counsel who came up with the idea of looking
 4 at the amount of interest at issue, correct?

5 A. Yes.

6 Q. It was counsel that came up with
 7 the idea of making that determination using
 8 the comparison between the default rate and
 9 the proposed plan rate, correct?

10 MR. PASQUALE: Objection to form.

11 Misstates prior testimony.

12 MR. BERNICK: I think it is exactly
 13 what he said.

14 MR. PASQUALE: I don't think it is.

15 Q. It was counsel who decided, came up
 16 with the idea of using those particular
 17 elements -- that is, proposed plan versus
 18 default rate -- to define the interest at
 19 issue, correct?

20 A. I'm not sure if it was our idea or
 21 their idea--

22 Q. And it is certainly --

23 A. -- to frame it in any manner.

24 Q. And it was certainly, Counsel, then
 25 who asked you to determine whether that was

1 E. Ordway

2 'di minimus', correct?

3 A. Yes.

4 Q. Now, because there is no standard
 5 for what's 'di minimus', did counsel give you
 6 any suggestions about what would be
 7 'di minimus'?

8 A. No.

9 Q. Now, you ultimately end up saying
 10 it's 'di minimus' by making a comparison to, I
 11 think as you put it, "the benefit now
 12 available to all stakeholders," right?

13 A. Yes.

14 Q. Whose idea was it to talk about
 15 what was available to all stakeholders? What
 16 does stakeholders even mean?

17 A. Stakeholders are all the -- in our
 18 context, the way we wrote this, were all the
 19 parties in interest associated with the
 20 Debtor's cases.

21 Q. Whose idea was it to determine
 22 whether the amount at issue was 'di minimus'
 23 by reference to the benefit available to all
 24 stakeholders?

25 MR. PASQUALE: Objection to form.

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1 E. Ordway

2 Q. Whose idea was that?

3 A. I believe that was our thought to
 4 include that in the affidavit.

5 Q. So, your point of reference, it was
 6 you who decided that the point of reference
 7 for making a comparison and determining
 8 'di minimus', that the right point of
 9 reference would be "benefit available to
 10 stakeholders"?

11 A. As well -- yes.

12 Q. And it's true, is it not, that
 13 there is no accounting standard, convention,
 14 or methodology that tells you to make that
 15 comparison?

16 A. That's correct.

17 Q. It's true that there is no
 18 financial analysis, standard or methodology or
 19 convention that tells you to make that
 20 comparison, correct?

21 A. Correct.

22 Q. If somebody else were to make a
 23 different comparison or to determine what was
 24 'di minimus', you would have no basis using a
 25 standard, or method or convention to say what

1 E. Ordway

2 they are, correct?

3 A. It would be their judgment versus
 4 my judgment.

5 Q. And to decide between your judgment
 6 versus their judgment, there is no objective
 7 standard or reliable method that you could
 8 point to right now that would enable you to
 9 make the decision, correct?

10 A. That's correct.

11 Q. Now, it's true, is it not, that
 12 when you make the comparison between the
 13 interest at issue and the benefit available to
 14 the stakeholders, you're really talking about
 15 a comparison of the interest at issue and the
 16 value that's been generated at Grace, correct?

17 A. Yes.

18 Q. And it is true, is it not, that the
 19 value that has been generated in Grace is
 20 reflected, according to your work, in the
 21 stock price, right?

22 MR. PASQUALE: Objection to form.

23 A. Yes.

24 Q. And basically, the comparison that
 25 you draw in determining the significance of

<p style="text-align: center;">Page 30</p> <p>1 E. Ordway 2 the interest at issue, are comparisons between 3 the interest that has accrued to the debt on 4 which you're opining by comparison to the 5 value that's accreted to equity, correct?</p> <p>6 MR. PASQUALE: I'm going to object 7 to form. The affidavit goes into more 8 than just that, David, as you well 9 know.</p> <p>10 A. It's one of the examples that we 11 use.</p> <p>12 Q. Right, you got comparisons to 13 EBITDA, you got comparisons to revenues. At 14 the end of the day, EBITDA and revenue are 15 also reflected in equity value, correct, or 16 not?</p> <p>17 A. One would assume that the market 18 value contemplates operating performance, so 19 the answer would be yes.</p> <p>20 Q. So fundamentally, at the heart of 21 your determination that the interest at issue 22 is 'di minimus', is a comparison between the 23 interest at issue on the one hand and the 24 value of Grace equity on the other, correct?</p> <p>25 A. Not only the value of Grace, but</p>	<p style="text-align: center;">Page 31</p> <p>1 E. Ordway 2 also the total value of the Company and the 3 operating performance of the Company.</p> <p>4 Q. Operating performance, generally 5 speaking, is reflected in equity; or not?</p> <p>6 A. Generally speaking.</p> <p>7 Q. But, is it true that equity value, 8 that is stock price, can reflect many, many 9 things other than company performance; true?</p> <p>10 A. Correct.</p> <p>11 Q. And in fact you provide no 12 methodology in your declaration here that 13 enables us to relate stock price to actual 14 company performance, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Now, it's true, is it not, that the 17 debt that you're talking about here and the 18 equity securities that you're talking about 19 here, are two totally different kinds of 20 securities?</p> <p>21 A. Correct.</p> <p>22 Q. Debt accretes value based upon 23 interest, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Equity accretes value based upon</p>
<p style="text-align: center;">Page 32</p> <p>1 E. Ordway 2 performance, not interest, correct?</p> <p>3 A. Can I change an answer?</p> <p>4 Q. Depends on which one you want to 5 change.</p> <p>6 MR. PASQUALE: Yes, you could --</p> <p>7 Q. I tell you what, if you want to ask 8 me whether you could change an answer, I 9 appreciate that. But you probably have the 10 prerogative at some point in this process to 11 change it on your own.</p> <p>12 So what answer do you want to 13 change?</p> <p>14 A. The one from -- the prior question 15 you asked me about the debt instrument, that 16 it accretes value according to its contract 17 rate of interest.</p> <p>18 In this instance, too, the debt is 19 traded, there's a market for trading the debt, 20 and the debt improved in value since the 21 filing of the bankruptcy, albeit there were 22 some ups and down, based on the performance of 23 the Company as well.</p> <p>24 Q. Sure. As a matter of the debt 25 contract, the security agreement or the</p>	<p style="text-align: center;">Page 33</p> <p>1 E. Ordway 2 agreement that underpins the debt security, 3 the value of that debt security, in the sense 4 of the obligation to repay that security, is 5 driven solely by the interest rate and 6 principal amount, correct?</p> <p>7 A. And other fees that are contained 8 in the terms of the agreement.</p> <p>9 Q. The value of the debt security, in 10 the sense of what is owed to the creditor is 11 not contingent upon how the Company performs, 12 correct?</p> <p>13 A. The obligation is not contingent 14 upon the Company's performance, that's 15 correct.</p> <p>16 Q. Where in the case of equity, equity 17 does not accrete interest under contract, 18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Or under law, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And equity, by contrast to debt, 23 accretes value based upon the performance of 24 the Company and how that performance then is 25 reflected in the stock price, correct?</p>

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2 A. Among other factors, yes.

3 Q. In fact, independently of market
4 price, you could add private equity that
5 accretes value simply based upon the
6 performance of the Company, correct?

7 A. Correct.

8 Q. If you wanted to make a different
9 comparison using your own work here -- put it
10 differently.

11 If we look at the work that you've
12 done here, you choose to determine whether the
13 interest at issue is 'di minimus' by comparing
14 it to the value that has accrued to Grace's
15 operations, among other things, correct?

16 MR. PASQUALE: Thank you, David.

17 A. Yes, among other things.

18 Q. But if we just wanted to talk about
19 what was owed under the debt instruments,
20 would you say that the amount at issue here is
21 'di minimus' in relationship to the amounts
22 that may or may not be owed under the debt
23 agreements themselves?

24 In other words, you compare the
25 debt to the equity. I'm asking you: If you

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2 just focused on the debt, the amount of
3 interest at issue here is not 'di minimus'
4 compared to what is owed on the debt, correct?

5 A. Correct.

6 Q. In fact, is it true that if we
7 compare the highest number, which is the
8 default interest calculation that you've done,
9 to the base interest rate, even assuming that
10 that base interest rate extends beyond the
11 event of Grace filing for bankruptcy, you're
12 talking about as much as a 40 percent
13 difference in the amount of interest it's
14 owing, correct?

15 A. I think that calculation is right.

16 Q. And that certainly would not be
17 'di minimus', correct?

18 A. The statement of being 'di minimus'
19 was in the context of other financial
20 information. But in the context of the debt
21 itself and the interest itself, I would not
22 call that 'di minimus', if that were the
23 comparison.

24 Q. Excuse me, what?

25 A. If that were the comparison we were

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2 making.

3 Q. Have you ever done an opinion on
4 solvency?

5 A. Yes.

6 Q. Is that something that's ordinarily
7 done by people within your field of expertise?

8 MR. PASQUALE: David, I'm going to
9 raise an objection. We had an
10 agreement that questioning would be
11 limited to the declaration.

12 MR. BERNICK: I'm not going to
13 stray from that agreement. You'll see.

14 MR. PASQUALE: But solvency is not
15 in here.

16 MR. BERNICK: That's what I wanted
17 to get you to say, really.

18 Q. You know about solvency opinions,
19 correct?

20 A. Yes, I do.

21 Q. You do not express here an opinion
22 -- in your declaration, you do not express an
23 opinion about solvency, nor do you do a
24 solvency calculation, correct?

25 A. Correct.

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2 MR. BERNICK: Did I abide by my
3 agreement?

4 MR. PASQUALE: Well, you did. But
5 you asked about solvency questions, and
6 now I feel compelled to say for the
7 record that the judge has deferred any
8 issues of solvency until after the
9 hearing. So we will reserve the right
10 to deal with that issue later if we
11 need to.

12 MR. BERNICK: I don't want to argue
13 about it. I'm making such progress
14 here.

15 MR. COBB: On the record for bank
16 lenders, the judge has deferred certain
17 questions with regard to solvency,
18 calculations thereof, until a later
19 date.

20 MR. PASQUALE: That's more
21 accurate.

22 MR. BERNICK: I'm glad we are in
23 agreement with respect to that.

24 BY MR. BERNICK:

25 Q. Now, you have looked also in your

1 E. Ordway

2 **Q. Have you determined what other, if**
 3 **any, contribution the general Unsecured**
 4 **Creditors at issue here, what other**
 5 **contribution, if any, those creditors made to**
 6 **the bankruptcy case?**

7 MR. COBB: Objection to form again.

8 A. Am I aware of other ones?

9 **Q. Yes.**

10 A. Yes.

11 MR. PASQUALE: Let's be clear.

12 Your objection is well taken.

13 MR. COBB: Objection as to form.

14 I'll be precise. The "general
 15 Unsecured Creditors at issue here."

16 You can answer if you can.

17 MR. PASQUALE: Do you mean the
 18 Committee, David or do you mean the
 19 creditor body? I think that's the
 20 issue.

21 MR. BERNICK: I make no such
 22 distinction. If you want to object to
 23 form on the grounds that the Committee
 24 is different from the lenders, feel
 25 free.

1 E. Ordway

2 **Unsecured Creditors made to Grace's stock**
 3 **price, correct?**

4 A. Correct.

5 **Q. I don't see anywhere in your**
 6 **declaration where you cite any evidence to**
 7 **support the proposition that the creditors**
 8 **support for acquisition and reinvestment had**
 9 **any effect on stock price. Would you agree**
 10 **with me that there is nothing in the**
 11 **declaration that provides that evidence?**

12 A. I agree.

13 **Q. Isn't it true that Grace had to**
 14 **bring proposed acquisitions before the**
 15 **Bankruptcy Court for approval?**

16 A. Correct.

17 **Q. Isn't it true that none of those**
 18 **acquisitions were contested by anybody?**

19 A. They weren't contested by us as a
 20 result of our review and analysis, and belief
 21 that it was the appropriate course of action.

22 **Q. But they weren't contested by any**
 23 **of the other stakeholders in the case, were**
 24 **they?**

25 A. Not that I recall.

1 E. Ordway

2 **Q. My question is whether you have**
 3 **looked to see whether the unsecured lenders in**
 4 **this case made any other contribution to the**
 5 **bankruptcy case itself other than being**
 6 **co-propONENTS OF GRACE'S PLAN OF**
 7 **REORGANIZATION?**

8 A. Is the question the unsecured
 9 lenders or the Creditors Committee? I guess
 10 you said --

11 **Q. Either or both.**

12 A. The Committee, I believe, has
 13 provided substantial contribution to the case
 14 in terms of, as the case has progressed, since
 15 its onset with being cooperative with the
 16 Debtor.

17 **Q. Is there anywhere in the**
 18 **declaration where you state that those**
 19 **activities in any way, shape, or form**
 20 **contributed to Grace's stock price?**

21 A. No.

22 **Q. Let's talk a little bit about**
 23 **creditors' support. Creditor's support for**
 24 **Grace acquisitions and reinvestments is one of**
 25 **the two contributions which you say that the**

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2 A. Not that I recall.

3 Q. So they were essentially
4 noncontroversial, weren't they?

5 A. I think it was controversial in the
6 sense of the Company making acquisitions
7 during a bankruptcy, but we accepted that they
8 were appropriate in the circumstances.

9 Q. So again, the contributions that
10 the creditors made, insofar as reinvestment
11 was concerned, was simply a decision not to
12 object, correct?

13 A. Correct.

14 Q. So when we're sitting here today,
15 you say that the creditors' support with
16 respect to acquisitions and reinvestment
17 created a positive contribution to stock
18 value, all you're really referring to is that
19 you might have had an impact on Grace's stock
20 value if you had decided to object to the
21 acquisitions or the reinvestments, correct?

22 MR. PASQUALE: Objection to form.

23 A. It would have been detrimental to
24 the value of the Company, highly likely, if we
25 objected to some of these acquisitions.

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2 Q. And you regard that as being a
3 favorable contribution to the case, that you
4 simply failed to get in the way?

5 MR. PASQUALE: Objection to form.

6 A. Yes, I do.

7 Q. Let's talk about money, the use of
8 cash, which appears on, I think, the next
9 page.

10 It says, "The equity holders of the
11 Debtors have benefited substantially as
12 compared to the lenders, in part from the use
13 of lender's cash." Do you see that?

14 A. Yes.

15 Q. Now, that has got two components,
16 one is that there was a benefit to the equity
17 holders, and the second, that the benefit was
18 substantial, right?

19 A. Yes.

20 Q. Incidentally, whose idea was it to
21 take a look at whether the general Unsecured
22 Creditors had created a positive contribution
23 to Grace's stock performance? Was that your
24 idea or counsel's idea?

25 A. I think it may have been counsel's

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2 idea.

3 Q. Who decided how that analysis
4 should be done; you or counsel?

5 A. I believe it was our idea as to how
6 this calculation and presentation should be --
7 should be made to illustrate that point.

8 Q. Well, but when it came to
9 creditors' support, what we just got done
10 talking about, was it your idea to identify
11 creditors support as a potential contributor
12 to stock price or counsel's idea?

13 A. The creditors' support as it
14 relates to the reinvestments and acquisitions?

15 Q. Yes.

16 A. That was my idea.

17 Q. And the use of lender's cash, was
18 that your idea or counsel's idea?

19 A. That may have been counsel's idea.
20 I don't recall.

21 Q. Now, in neither instance, that is
22 neither in respect to creditors' support nor
23 in respect to use of lender's cash, in neither
24 case do we see any quantification of the
25 contribution, correct?

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2 A. I don't have it calculated in here
3 in this paragraph, but it's a half a million
4 dollars worth of lending, plus 400 and change
5 of interest that hasn't been paid.

6 Q. I just asked you whether we see
7 anywhere in here a methodology that you used
8 in determining what contribution, if any, that
9 cash had?

10 A. No.

11 Q. Now, if we wanted to determine --
12 with respect to creditors' support, if we
13 wanted to determine the impact that that had
14 on stock price, can you point to any
15 accounting or financial analysis, methodology
16 or standard that you used in determining the
17 creditors' support did have a positive impact
18 on stock price?

19 A. I don't have a calculation to
20 demonstrate that.

21 Q. Do you have any kind of standard,
22 methodology, or stated methodology to
23 demonstrate it, on creditors' support?

24 A. There isn't a standard methodology
25 for determining a precise quantification of

<p style="text-align: right;">Page 54</p> <p>1 E. Ordway 2 the benefit of the stock price from the 3 lender's cash. 4 Q. I'm talking about creditors' 5 support. 6 MR. PASQUALE: More generally. 7 Q. Creditors' support for acquisitions 8 and reinvestments. 9 A. There isn't a precise methodology 10 for determining that. 11 Q. There isn't any methodology for 12 determining that, correct, this is a question 13 of your judgment? 14 A. It would be a question of judgment. 15 Q. When it comes to lender's cash. I 16 want to go through lender cash a little bit. 17 First of all, we don't see here the 18 deployment of any standard, methodology or 19 objective test in saying the use of lender's 20 cash benefited the equity holders or the 21 Debtor, correct? 22 A. Correct. 23 Q. Same thing with regard to the word 24 "substantially," it says that the equity 25 holders benefited substantially. Was that</p>	<p style="text-align: right;">Page 55</p> <p>1 E. Ordway 2 your word or counsel's word? 3 A. My word. 4 Q. Is that a word that was derived 5 from the accounting literature or the 6 financial analysis literature, or that's just 7 a general word in your vocabulary? 8 A. It's a general word in my -- it is 9 my judgment to use that word. 10 Q. That there is no objective measure 11 or test that you used to determine 12 substantial or insubstantial, correct? 13 A. No. 14 Q. Is my statement correct, that there 15 was no objective test that you used? 16 A. Sorry. Yes. 17 Q. Now, when we talk about the money, 18 the cash that the lenders provided to Grace 19 that Grace used, we have the principal of \$503 20 million, principal plus accrued interest as of 21 the date of filing, correct? 22 A. Correct. 23 Q. Now, the loan documents call for 24 compensation for the use of that principal 25 with simple interest, correct?</p>
<p style="text-align: right;">Page 56</p> <p>1 E. Ordway 2 A. Correct. 3 Q. And we know that the compensation 4 for the use of that principal with simple 5 interest, would be about the \$287 million 6 number, right? 7 A. That sounds correct. That sounds 8 about right. 9 Q. Now, if we deal with default, 10 default has got two components to it, one is a 11 different rate, and the other is compounded, 12 correct? 13 A. Correct. 14 Q. If we just talk about the default 15 rate applying before we get to interest on 16 interest, just apply the higher default rate, 17 am I right that that would take the interest 18 up approximately \$15 to \$18 million to about 19 \$304 million? 20 A. I don't know that calculation, if 21 that's right or wrong. 22 Q. So, if we have principal of 23 \$500 million, and the unpaid interest on the 24 principal, not interest on interest, but 25 interest on the principal, that would be</p>	<p style="text-align: right;">Page 57</p> <p>1 E. Ordway 2 something in the area of between \$280 and 3 \$300 million approximately? 4 MR. PASQUALE: Object to form. 5 A. I'm not sure of your calculation. 6 But it sounds order of magnitude, like it 7 might be good for this discussion. 8 Q. What I'm getting at is: When we 9 talk about use of lender's cash, we have 10 principal, we have interest on the principal 11 and we have interest on interest. Those are 12 three different things, correct? 13 A. Correct. 14 Q. And all I'm trying to do is get a 15 rough idea of the three tranches: The 16 principal plus accrued interest as of the date 17 of the filing is roughly \$500 million, the 18 unpaid interest on principal -- simple 19 interest, not interest on interest, interest 20 on principal -- is another 300-odd-million 21 dollars, and then we have the interest on 22 interest component which takes you as high up 23 as the \$414 million, right? 24 MR. PASQUALE: Objection. Asked 25 and answered.</p>

<p style="text-align: right;">Page 58</p> <p>1 E. Ordway 2 A. I can't confirm precisely your 3 number other than the 414 and the 4 500-and-three-and-a-half, which is the 5 principal plus pre-petition interest. 6 Q. So when you say that really it is 7 the equity holders and the Debtors used the 8 lender's cash, how do you know that they used 9 unpaid interest on principal?</p> <p>10 A. I don't understand the question. 11 Q. Well, unpaid interest on principal, 12 you have the principal of \$500 million, you 13 then have monies above that all the way up to 14 another \$400 million, what portion of that 15 \$400 million that you say would be owing to 16 the Unsecured Creditors as interest, either 17 interest on principal or interest on interest, 18 how much of that do you know that the Debtor 19 actually used in its operations?</p> <p>20 A. It would be -- I suppose we can 21 calculate it by looking at change in cash 22 balances from the beginning of the case 23 through now, for example. The difference -- 24 first of all, cash is fungible, but presumably 25 the balance -- the difference between that</p>	<p style="text-align: right;">Page 59</p> <p>1 E. Ordway 2 would have been used in operations, to support 3 operations. 4 Q. But that's what I'm asking: Do you 5 know how much of the lender's interest, unpaid 6 interest, actually got used in operations? 7 Does that anywhere appear in the affidavit?</p> <p>8 A. No. 9 Q. It's true, is it not, that Grace 10 has had substantial cash balances, correct?</p> <p>11 A. Yes. 12 Q. That cash balance as of the end of 13 June of this year is about \$400 million and 14 that's after some very substantial payments, 15 correct?</p> <p>16 A. Yes. 17 Q. Do you know that Grace's cash 18 balance ever was lower than the unpaid 19 interest on interest?</p> <p>20 A. I don't know. 21 Q. Well, if you don't know, how do you 22 know that Grace actually used the lender's -- 23 not the principal, but actually used unpaid 24 interest in order to fund its growth?</p> <p>25 A. I know that taken over time, this</p>
<p style="text-align: right;">Page 60</p> <p>1 E. Ordway 2 is a significant amount of money and that it 3 exceeds the change in the cash on-hand from 4 the beginning of the case till now. So it is 5 implicit that that difference, a portion was 6 used to fund operations. And certainly during 7 the case it was used to fund operations. 8 Q. I'm not talking about just the 9 interest on principal or interest on interest. 10 Not the original \$500 million.</p> <p>11 MR. PASQUALE: So he is going 12 outside the declaration to ask you that 13 question.</p> <p>14 MR. BERNICK: To the contrary.</p> <p>15 MR. PASQUALE: That's what he 16 wrote.</p> <p>17 MR. BERNICK: It is all embedded. 18 That's what I'm trying to find out.</p> <p>19 Q. You said that the equity holders 20 used the lender's cash. I'm construing 21 lender's cash to be the broadest it could 22 possibly be, which is principal, interest on 23 principal and interest on interest.</p> <p>24 I'm simply asking whether you know 25 that statement to be true with respect to</p>	<p style="text-align: right;">Page 61</p> <p>1 E. Ordway 2 interest on principal or interest on interest, 3 based on what is in your declaration?</p> <p>4 A. I don't have a calculation to 5 precisely demonstrate how much of the unpaid 6 interest, whether it's interest on interest, 7 was, in effect, used for operations other than 8 generally it had to have been.</p> <p>9 Q. No quantification at all appears in 10 the declaration, correct?</p> <p>11 A. No.</p> <p>12 Q. You can't tell whether it was 13 substantial or 'di minimus', correct, as an 14 expert?</p> <p>15 A. The reason that we're used the word 16 "substantial" is because the sum is \$414 17 million, that's a substantial number.</p> <p>18 Q. Fair enough. But you cannot, as an 19 expert, say "substantial" when it comes to the 20 actual cash that was actually used in 21 operations because you don't know how much 22 that was, correct?</p> <p>23 A. I don't know how much that was at 24 this point in time, although that's 25 determinable, certainly.</p>